

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Employer Identification Number: [REDACTED]
Key District: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

[REDACTED] is a coalition of consumers, utilities, community action agencies, service organizations, small businesses, housing agencies, and economic development groups. Your purpose is to educate consumers and policy makers regarding the interests of residential customers and small businesses during restructuring of Ohio's utility industry from vertically integrated monopolies to a competitive wholesale and retail market. Many questions, such as how small energy consumers will participate in the retail market and how to preserve such critical consumer protections currently provided by the regulated monopolies as universal service, low income assistance, demand side management, high service quality and affordable prices, require analysis, research and experimentation.

Consumer education, your primary activity, is undertaken through monthly newsletters, information packets, press releases, conferences, and speaking engagements. [REDACTED] provides up-to-date information to consumers on utility restructuring issues. [REDACTED] staff monitors restructuring activities in [REDACTED] by attending the Public Utility Commission of [REDACTED] Electricity Restructuring Roundtable. In addition, [REDACTED] monitors other activities at the Commission, including the development of electric service standards, rate and forecasting cases, and other activities as appropriate. Actions taken at the Commission are communicated to members and the general public through the newsletters, etc.

You also monitor hearings and activities in the [REDACTED] General Assembly and the Congress as they relate to [REDACTED] regulation. In addition, [REDACTED] staff keeps tabs on restructuring activities

[REDACTED]

ongoing throughout the United States and in international markets through newsletters, magazines, on-line services and information networks, and attending conferences. Actions taken in these forums and other relevant information is again communicated to members and the general public through the newsletters, etc.

You operate your consumer information campaign based on the principle that informed consumers can effect the evolution of legal and regulatory structures only when clear, unbiased information is made available for their consideration. [REDACTED] seeks to provide that information to the consumer.

You will educate policymakers both statewide and nationally on issues in utility restructuring and the potential economic impacts on small business and residential consumers. Utilities and large industrial and commercial energy users are actively communicating their views on restructuring to legislatures and public utility commissions. Small consumer issues are often overlooked in this process. Moreover, there is little research or practical information on how small consumers can participate in the retail utility marketplace. [REDACTED], through research, information sharing and the coordination of pilot activities, seeks to define how small consumers can participate in a retail marketplace, identify barriers and difficulties in participating in a retail marketplace, and define issues and options for consideration by policymakers on how to ensure effective competition in utility services with attendant economic benefits for small consumers. While you state that you do not advocate the adoption or rejection of legislation, you do seek to provide information relevant to state legislators in the consideration of legislation.

Helping members in the development of market-based approaches to providing universal service at affordable rates to small consumers in a competitive utility market place is another of your activities. [REDACTED] will coordinate and provide assistance to members to create partnerships between members and other private and public organizations to investigate mechanisms to permit small consumers to receive the economic benefits associated with utility restructuring. Specific activities will include, but are not limited to, the following: profiling small consumer loads; aggregating small consumers so they can negotiate wholesale power rates; providing billing, metering, and energy efficiency services; purchasing wholesale power, and distributing power to small consumers. This assistance is provided through consultants, government officials, and the executive director.

According to [REDACTED], "Electric utility restructuring in [REDACTED] can be very positive for consumers,

[REDACTED]

if it is done correctly. We believe consumers could see lower prices because of less regulation and a competitive marketplace. However, if the Public Utilities Commission of [REDACTED] and the General Assembly restructure the industry incorrectly, small consumers could see their rates double." You also state that "[R]esidential and small business customers can benefit from a competitive market but they must be able to bargain effectively for electricity with the big industrial and commercial customers. The current regulatory system has bent over backwards to cut special deals for business, while small consumers pay a disproportionate share of the costs of utility operations." You "believe that by educating consumers throughout [REDACTED] on the details of restructuring, [REDACTED] can help insure that consumers don't get ripped-off in the rush to competition," and that "[I]nformed consumers will help the political process work so that electric utility restructuring benefits everyone, not just special interests."

To this end you are currently participating in the Public Utility Commission of [REDACTED] helping to develop guiding principles for the restructuring debate. You are also monitoring activities in the General Assembly, developing a research agenda, and investigating approaches to aggregate residential and small business consumers so they can compete effectively with big business in a competitive marketplace.

In the introduction of the "Legislative Update" section of your newsletter you state, "[E]lectric utility restructuring will ultimately require legislation at the state level. Industrial energy users and some utilities are pursuing federal legislation to force the states to restructure their regulatory systems." This section updates legislation pending both in the [REDACTED] General Assembly and at the federal level. In the Executive Director's comments in this same newsletter, he states that benefits for small users and residential consumers "can only occur if the legislatures and commissions come up with ways to ensure effective competition between small users and the big guys."

In your literature to prospective members and members you include statements, such as the following, encouraging involvement in the legislative process. "Join [REDACTED] and help ensure there is a responsible voice for [REDACTED] residential consumers and small businesses during the electricity restructuring debate." "Remember, the larger our membership, the louder our voice." "The [REDACTED] General Assembly and Congress is preparing now to make the decisions that will determine the size of your bill." "Join [REDACTED] and help make sure restructuring works in the public interest, not just for the special interests."

[REDACTED]

Section 501(a) of the Code, in part, provides for the exemption from federal income tax for organizations described in section 501(c).

Section 501(c)(3) of the Code, in part, provides for the exemption of organizations which are both organized and operated exclusively for charitable purposes as long as, among other conditions, no part of the net earnings inure to the benefit of any private individual or shareholder.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations states, in part, that if an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1) of the regulations states, in part, that an organization is not organized exclusively for exempt purposes unless its activities are limited to one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations, in part, states that an organization will not be operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations states, in part, that an organization is not operated exclusively for exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(a)-1(c) of the regulations states, in part, that the words private shareholder or individual refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(c)(3) of the regulations states, in part, that an organization is an "action" organization, and not exempt under section 501(c)(3) of the Code, if a substantial part of its activities is attempting to influence legislation. For this purpose, an organization will be regarded as attempting to influence legislation if the organization contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation, or advocates the adoption or rejection of legislation.

Section 1.501(c)(3)-1(c)(3)(iv) of the regulations provides that an organization is an 'action' organization if it has the following two characteristics: (a) Its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of

[REDACTED]

proposed legislation; and (b) it advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. In determining whether an organization has such characteristics, all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations, in part, states that an organization is not organized or operated for exempt purposes unless it serves a public rather than a private interest. To meet this requirement it is necessary that the organization establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, or shareholders of the organization.

Rev. Rul. 62-71, 1962-1 C.B. 85, describes an organization which, as its primary objective, advocates the adoption of a doctrine or theory which can become effective only by the enactment of legislation. It holds that it is not entitled to exemption under section 501(c)(3) of the Code because it is an 'action' organization and thus is not operated exclusively for educational purposes within the meaning of section 501(c)(3).

Rev. Rul. 67-293, 1967-2 C.B. 185, holds that an organization substantially engaged in promoting legislation to protect or otherwise benefit animals is not exempt from Federal income tax under section 501(c)(3) of the Code, even though the legislation it advocates may be beneficial to the community, and even though most of the attempts to influence legislation may be indirect.

In Better Business Bureau of Washington D.C. v. United States, 326 U.S. 279 (1945), it was held that a single non-exempt purpose, if substantial in nature, would preclude exemption under section 501(c)(3) of the Code regardless of the number or importance of truly exempt purposes.

You intend to create partnerships and/or aggregations of small consumers and assist these groups in bargaining for power at lower rates. You also plan to provide them with such services as billing and metering, and are considering the wholesale purchasing of power for distribution/sale to these small consumers. The provision of these services would constitute a private benefit and the inurement of earnings in contravention of sections 1.501(c)(3)-1(c)(2) and -1(d)(1)(ii) of the regulations, precluding exemption under section 501(c)(3) of the Code.

[REDACTED]

The provision of technical assistance to your small business members to help them in negotiating economic benefits for their businesses is a private benefit in contravention of section 501(c)(3) of the Code and section 1.501(c)(3)-1(d)(1)(ii) of the regulations and would preclude exemption under section 501(c)(3) of the Code.

In Addition, a substantial part of your activities is the encouraging of the general public to become involved in the legislative process in support of your position. Also, one of your stated purposes is to educate state and national policymakers (legislators). Thus a substantial part of your activities is attempting to influence legislation, and you are an 'action' organization within the meaning of section 1.501(c)(3)-1(c)(3) of the regulations. Because your primary objective can be attained only by legislative action and your activities are directed to the attainment of that objective, you are an 'action' organization as that term is defined in section 1.501(c)(3)-1(c)(3)(iv). This alone would preclude exemption under section 501(c)(3). Under the rationale of Rev. Rul. 67-293, supra, it is immaterial whether the legislation would be beneficial to the community.

Under the rationale of Rev. Rul. 62-71, supra, you are not operated exclusively for exempt purposes specified in section 501(c)(3) of the Code because you are an action organization with a specific objective attainable only through legislation. Because this is a substantial purpose, you are neither organized nor operated exclusively for exempt purposes within the meaning of section 501(c)(3). Thus sections 1.501(c)(3)-1(a), -1(b)(1), and -1(c)(1) of the regulations and the rationale of Better Business Bureau, supra, would preclude exemption.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that

[REDACTED]

person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

[REDACTED]

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

[REDACTED]

[REDACTED]